

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DONALD GRANBERRY, PETITIONER

V.

SUPT. BRIDGES, ET AL, RESPONDENTS

C.A. No. 04-241 ERIE

JUDGE SEAN McLAUGHLIN

MAGISTRATE JUDGE BAXTER

OBJECTIONS TO MAGISTRATE JUDGE REPORT/RECOMMENDATION
TO THE HONORABLE SEAN McLAUGHLIN, JUDGE OF THE SAID
COURT:

AND NOW, THE 21 DAY OF JULY, 2005, COMES PETITIONER, DONALD
GRANBERRY, PRO SE, PERSONALLY FILES THE FOREGOING DOCUMENT
AND REPRESENTS:

1. PETITIONER IS CURRENTLY INCARCERATED IN S.C.I. ALBION.
2. PETITIONER HAS FILED A WRIT OF HABEAS CORPUS PURSUANT TO
28 U.S.C. § 2254 AGAINST THE RESPONDENT PENNSYLVANIA BOARD
OF PROBATION & PAROLE DUE TO SUBJECTING PETITIONER TO EX
POST FACTO VIOLATIONS IN THE FOLLOWING RESPECTS:

(A) RESPONDENTS ARE APPLYING THE 1996 AMENDMENTS OF
THE 1941 PAROLE ACT TO PETITIONER'S CASE. WHICH CASE
OCCURRED MANY YEARS PRIOR TO THE 1996 AMENDMENTS
BEING ENACTED. WHICH ACTION HAS DEFINITELY PROLONGED
PETITIONER'S INCARCERATION BY SUBJECTING HIM TO
MORE STRINGENT PAROLE STANDARDS.

(B) RESPONDENT CREATED A POLICY IN 2003 WHICH MADE ALL
BURGLARIES VIOLENT OFFENSES, AND HAS SUBJECTED THE
PETITIONER TO THESE CHARGES DESPITE THE LAW STATING

OFFENSE IS NONVIOLENT. COM. V. BELAKA, 825 A.2d 1252; COM. V. GUILFORD, 861 A.2d 365; 42 PA. C.S.A. § 9714 (g); 61 P.S. § 331.34 (2) (b) (1).

3. PETITIONER IS IMPRISONED FOR A BURGLARY OF A BUSINESS WHEN NO ONE WAS PRESENT. THE LAW IS CLEAR THAT PETITIONER'S OFFENSE IS NONVIOLENT.

4. PETITIONER HAS CONTINUOUSLY BEEN SUBJECTED TO PAROLE REVIEWS IN VIOLATION OF HIS FEDERAL & STATE CONSTITUTIONAL RIGHTS. HIS MOST RECENT REVIEW OCCURRED JULY 5, 2005, AND PETITIONER WAS SUBJECTED TO VIOLATIONS OF THE EX POST FACTO CLAUSE.

5. TO INSURE THAT THIS REVIEW WOULD BE CONDUCTED ACCORDING TO THE LAW PETITIONER SOUGHT A TEMPORARY RESTRAINING ORDER / PRELIMINARY INJUNCTION. PETITIONER'S PURPOSE WAS SOLELY TO PREVENT RESPONDENTS FROM CONTINUING TO VIOLATE HIS CONSTITUTIONAL RIGHTS WHILE THIS ACTION IS PENDING.

6. THE U.S. MAGISTRATE JUDGE MAXTER DENIED PETITIONER'S REQUEST AND ISSUED A REPORT AND RECOMMENDATION THAT PETITIONER'S REQUESTED RELIEF BE DENIED.

7. PETITIONER RESPECTFULLY OBJECTS TO THE REPORT AND RECOMMENDATION FOR THE FOLLOWING REASONS:

(A) PETITIONER SUBMITTED DOCUMENTED EVIDENCE IN HIS ANSWER TO RESPONDENTS MOTION TO DISMISS WRIT OF HABEAS CORPUS.

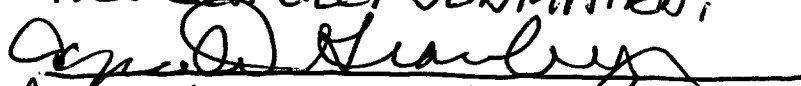
(B) PETITIONER'S CLAIMS INVOLVES QUESTIONS OF CLEARLY ESTABLISHED LAW. IN THAT SURVEY OF A STRUCTURE NOT ADAPTED FOR OVERNIGHT ACCOMMODATION WHEN NO ONE IS PRESENT IS A NONVIOLENT OFFENSE.

(C) THE DOCUMENTED EVIDENCE NOT ONLY SHOWS THAT THE RESPONDENTS ARE APPLYING THE 1996 AMENDS. TO THE 1941 PAROLE ACT TO PETITIONER'S CASE. IT'S ALSO DEMONSTRATED THE RESPONDENTS ARE IN VIOLATION OF THE LAW.

(D) THE RESPONDENTS WILL SUFFER NO HARMORHIP BY BEING ORDERED TO FOLLOW THE LAW. ADDITIONALLY, THE RELIEF SOUGHT WILL SERVE THE PUBLIC INTERESTS.

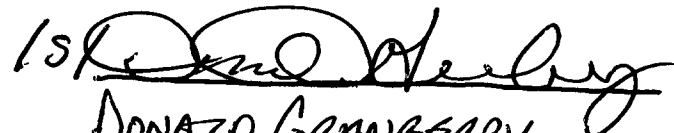
(E) THE STATUS QUO IS ONE OF ACTION THAT WILL INFLICT IRREPARABLE INJURY UPON PETITIONER IN LENGTHENING HIS IMPRISONMENT BY UNCONSTITUTIONAL ACTIONS. THE RELIEF SOUGHT IS THE ONLY WAY TO PROTECT PETITIONER FROM HARM, AND TO PREVENT HIM FROM BEING PUNISHED FOR FILING THIS ACTION.

WHEREFORE, PETITIONER RESPECTFULLY MOVES THIS HONORABLE COURT TO GRANT HIS REQUEST FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION.

RESPECTFULLY SUBMITTED,

DONALD GRANDBERRY, PET., PRO SE
ROUTE 18, ALBION, PA 16475-0002

VERIFICATION

I, HEREBY VERIFY THIS 21 DAY OF JULY, 2005, THE FACTS SET FORTH HEREIN ARE TRUE AND CORRECT AND MAKE SUBJECT TO THE PENALTY OF PERJURY.


DONATO GRANBERRY

PROOF OF SERVICE

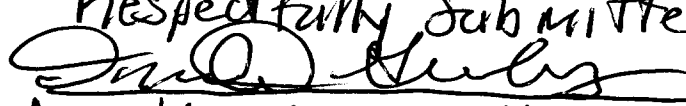
I HEREBY CERTIFY THIS 21 DAY OF JULY, 2005, I AM SERVING A TRUE AND CORRECT COPY OF THIS DOCUMENT UPON THE PERSONS BELOW VIA U.S. FIRST CLASS MAIL:

Clerk's Office
U.S. DISTRICT COURT
17 SOUTH PARK ROW
ERIE, PA 16501

HON. SPAN McLAUGHLIN
U.S. DISTRICT COURT
17 SOUTH PARK ROW
ERIE, PA 16501

ATTORNEY General's Office
6TH FLOOR, MANOR COMPLEX
564 FORBES AVE.
Pgh, PA 15219

U.S. MAGISTRATE JUDGE BAXTER
U.S. DISTRICT COURT
17 SOUTH PARK ROW
ERIE, PA 16501

Respectfully Submitted,

DONATO GRANBERRY, Petitioner, Pro Se
Prison 18
Albion, PA 16475-0002